

EXHIBIT A to Amendment 39

EXHIBIT 3

GUARANTY

This GUARANTY, dated as of this 12TH day of JUNE, 2009, is made by Vix ERG Pty Ltd, an Australian corporation ("Guarantor"), in favor of the Central Puget Sound Regional Transit Authority ("Sound Transit"), King County ("King County"), the Kitsap County Public Transportation Benefit Area ("Kitsap Transit"), the Pierce County Public Transportation Benefit Area ("Pierce Transit"), the City of Everett ("Everett"), the Snohomish County Public Transportation Benefit Area ("Community Transit"), and the State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF") (herein referred to in the singular as an "Agency" and in the plural as the "Agencies").

RECITALS

A. ERG Transit Systems (USA), a California corporation ("Contractor"), and each of the Agencies entered into that certain Contract No. 229944, titled "Contract for the Development, Implementation, Operation and Maintenance of the Regional Fare Coordination System" (as amended, the "Contract"), whereby the Contractor agreed to design, implement, operate and maintain a Regional Fare Collection System ("RFCS") subject to the terms and conditions set forth in the Contract.

B. As required by Section 2.1-1.2 of the Contract, the Contractor's performance was originally guaranteed by its then-parent corporation, ERG Limited ("Original Guarantor").

C. As a result of a corporate restructuring, the Original Guarantor is no longer in a position to guarantee the Contractor's performance. By signing this Guaranty, Vix ERG Pty Ltd ("Guarantor") intends to replace and assume all the obligations of the Original Guarantor.

D. Contractor is a wholly-owned subsidiary of Guarantor. Guarantor expects to realize substantial direct and indirect benefits as a result of Contractor entering into and performing the Contract.

E. Contractor, Original Guarantor and the new Guarantor understand and agree that a guaranty has always been and will remain a material term of the Contract to ensure that the Contract work is fully completed, including without limitation the future operations and maintenance Contract requirements. So that no gap or absence of guaranty protection will occur as a result of the restructure, this new Guaranty will take effect immediately upon the date of execution of this Guaranty.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Guarantor hereby agrees as follows:

1. Termination of Original Guarantee. At the date of execution of this Guaranty, Guarantor assumes all liabilities and obligations of the Original Guarantor under the Original Guaranty and the Agencies release and discharge the Original Guarantor from all obligations and liabilities under the Original Guaranty. The Agencies agree to do all things reasonable necessary to effect such release and discharge of the Original Guaranty.
2. Guaranty. Guarantor hereby unconditionally and irrevocably guaranties to the Agencies, and each of them, the full and punctual performance by Contractor of all terms, covenants, conditions and obligations that are to be performed by Contractor under the Contract, as the same may be duly amended, modified, or changed by the parties thereto, including the payment of all sums due thereunder ("the Guaranteed Obligations"). If the Contractor fails to perform any of the Guaranteed Obligations in accordance with the terms of the Contract, and fails to cure such failure within thirty (30) days after written notice of such failure by the Agencies, or if the failure cannot be reasonably cured within thirty (30) days, fails to take diligent steps within such thirty (30) day period to cure such failure, Guarantor shall itself, acting directly or through others, fully perform such obligation; provided that, in the event that the Contractor has filed, or there has been filed against the Contractor, a bankruptcy case under Title 11 of the U.S. Code, or in the event the Agencies are otherwise stayed by a court of competent jurisdiction from giving the aforementioned notice, the Guarantor shall fully perform the obligation, without the requirement that the Agencies give notice of failure to the Contractor. Notwithstanding any other term in this Guaranty, Guarantor's obligation to perform, and the liability of Guarantor for any breach of the Guaranteed Obligations, shall not be greater than its obligations to the Agencies would have been had Guarantor been signatory to the Contract instead of Contractor, and Guarantor shall have all of the rights and defenses of the Contractor provided in the Contract. Guarantor agrees that this Guaranty is a present and continuing guaranty of performance and not only of collectibility, and that, except for the aforementioned requirements, the Agencies shall not be required to prosecute collection, enforcement or other remedies against Contractor, or any other person, or to enforce or resort to any of the collateral or other rights or remedies that pertain thereto, before calling on Guarantor for performance. The Agencies requesting payment from the issuers of a Letter of Credit or Performance Bond referenced in the Contract, if any, shall not excuse Guarantor from performance of any of the Guaranteed Obligations; provided that the Guarantor shall be excused from performing any of the Guaranteed Obligations to the extent that the Agencies have received payment under a Letter of Credit and/or Performance Bond pursuant to the terms of the Contract in order to cure a failure of the Contractor with respect to such Guaranteed Obligation.
3. Continuing Guaranty. Guarantor agrees that the Guaranteed Obligations shall be primary obligations of Guarantor and shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that Guarantor may have against the Agencies, the Contractor, or any other person other than those arising from non-performance of the Contract by the Agencies and any other right or defense of the Contractor provided in the Contract, and this Guaranty shall remain in full force and effect without regard to, and, other than a circumstance or condition relating to the rights and defenses available to the Guarantor under Paragraph 2 above, this Guaranty shall not be released, discharged or affected in any way by any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including without limitation:

(a) any lack of validity or enforceability of the Contract except to the extent the basis of such lack of validity or enforceability is attributable to an act or omission of the Agencies,

(b) any termination of the Contract, to the extent that any Guaranteed Obligations survive the termination of the Contract,

(c) any duly executed amendment, modification or other change in the Contract;

(d) the Agencies accepting or declining to accept from any person or entity any pledge, guarantee, indemnity, letter of credit, performance bond, or any other assurance that secures the Guaranteed Obligations, whether existing at the date this Guaranty is executed or at any time in the future;

(e) any payments under any letter of credit, performance bond or other security device arranged by Contractor in favor of the Agencies;

(f) any failure, omission or delay on the part of Contractor, Guarantor or the Agencies to conform or comply with any term of the Contract;

(g) any waiver, compromise, release, settlement or extension of time of payment or performance or observance of any of the obligations or agreements contained in the Contract;

(h) any action or inaction by the Agencies under or in respect of the Contract, any failure, lack of diligence, omission or delay on the part of the Agencies to enforce, assert or exercise any right, power or remedy conferred on the Agencies in the Contract, or any other action or inaction on the part of the Agencies;

(i) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Contractor, Guarantor or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(j) any merger or consolidation of Contractor or Guarantor into or with any person or other legal entity, or any sale, lease or transfer of any of the assets of Guarantor or Contractor to any other person or other legal entity;

(k) any change in the ownership of the capital stock of Contractor or of Guarantor or any change in the relationship between Guarantor and Contractor, or any termination of any such relationship;

(l) to the extent permitted by law, any release or discharge by operation of law of either Guarantor or Contractor from any obligation or agreement contained in the Contract; or

(m) to the extent permitted by law, any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit recourse against Guarantor or Contractor.

4. Waivers. Subject to the rights and defenses available to the Guarantor pursuant to Paragraph 2 above, Guarantor unconditionally waives, to the extent permitted by law, (i) notice of any of the matters referred to in Paragraph 2 above, (ii) all notices that may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights by the Agencies against Guarantor, including, without limitation, any demand, presentment and protest, or proof of notice of non-performance under the Contract, (iii) any requirement to exhaust any remedies resulting from any default under the Contract; (iv) any notice of any sale, transfer or other disposition of any right, title or interest of the Agencies under the Contract, except as provided in Paragraph 6 below; (v) any defense based upon the modification, renewal, extension or other alteration of the Guaranteed Obligations, or of the documents executed in connection therewith; (vi) any defense based on the fact that a default by the Contractor has or may have occurred prior to the signing of this Guaranty.

5. Representations and Warranties of Guarantor. Guarantor makes the following representations, warranties and agreements:

(a) Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of Australia and has all requisite authority to conduct its business in Washington State of the United States of America and each jurisdiction in which its business is conducted.

(b) Guarantor has the corporate power and authority and legal right to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been duly authorized by proper corporate proceedings, evidence of which is attached hereto, and this Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable laws.

(c) The execution and delivery by Guarantor of this Guaranty, the consummation of the transactions herein contemplated, and compliance with the provisions hereof will not violate any law, rule, regulation, order, writ, judgment, injunction, decree or award that is binding on Guarantor or its articles of incorporation or its Constitution or bylaws or the provisions of any indenture, instrument or agreement to which Guarantor is a party or is subject, or by which it, or its property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any lien in, of or on the property of such Guarantor pursuant to the terms of any such indenture, instrument or agreement.

(d) No litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor.

(e) Guarantor is not in default in the payment of any material sum or in the performance or observance of any material obligation in respect of any present or future, actual or contingent, indebtedness in respect of any financial accommodation, credit or hedging arrangement, finance lease or hire purchase arrangement or any guarantee or other assurance given in respect of any such indebtedness, or any letter of credit or performance bond; and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any present or future, actual or contingent, indebtedness in respect of any financial accommodation, credit or hedging arrangement, finance lease or hire purchase arrangement or any guarantee or other assurance given in respect of any such indebtedness, or any letter of credit or performance bond.

(f) The most recent financial reports of Guarantor heretofore delivered to the Agencies are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent financial statements.

(g) Guarantor has reviewed the Contract and the Contractor has all powers, rights, and resources necessary to enter into the Contract and perform all obligations therein.

(h) All information relating to the Guarantor and the Contractor provided to the Agencies by the Guarantor in connection with this Guaranty is true in all material respects and is not, by omission or otherwise, misleading in any material respect.

6. Successors and Assigns. This Guaranty shall inure to the benefit of the Agencies and each of them, and their respective successors and, in the event of a reorganization of the Agencies or any individual Agency, their assigns in connection with such reorganization. This Guaranty shall be binding on Guarantor and its successors and assigns, and shall continue in full force and effect until all of the Guaranteed Obligations are performed.

7. Reinstatement. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, observance or performance, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by the Agencies upon the insolvency, bankruptcy or reorganization of the Agencies, all as though such payment, observance or performance had not been made.

8. Payments. For Guaranteed Obligations that involve the payment of money, the Guarantor shall make payment on demand of the Agencies in immediately available funds in U.S. currency to the account and in the manner notified by the Agencies to the Guarantor.

9. No Merger. The Agencies will hold any judgment or order obtained by them against any person or entity in respect of the Guaranteed Obligations collaterally with this Guaranty and this Guaranty will not merge in that judgment or order.

10. Subrogation. Notwithstanding any payment, observance or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to all of the rights of the Agencies against the Contractor and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights against the Contractor or against any endorser or other guarantor of all or any part of any obligations of the Contractor to the Agencies with respect to any liabilities of the Guarantor under this Guaranty. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of any subrogation rights at any time when all of the obligations of the Contractor to the Agencies shall not have been performed in full, such amount shall be held by the Guarantor in trust for the Agencies, segregated from other funds of the Guarantor, be turned over to the Agencies in the exact form received by the Guarantor (duly endorsed by the Guarantor to the Agencies, if required), to be applied against the obligations of the Contractor to the Agencies, whether matured or unmatured, in such order as the Agencies may determine.

11. Actions Necessary to Effect Guaranty. Guarantor must immediately on the request of the Agencies, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Agencies reasonably require, or as are required by law, to perfect or to give effect to the rights and powers of the Agencies created, or intended to be created, by this Guaranty.

12. No Waiver of Rights. Neither any delay in exercising, nor any failure on the part of the Agencies, the Guarantor or the Contractor to exercise any right, power or privilege under this Guaranty or the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance among Guarantor, Contractor and the Agencies. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by the Contract or under law. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in the same, similar or any other circumstance.

13. Acceptance of Jurisdiction and Governing Law. This Guaranty shall be governed for all purposes by the law of the State of Washington. Sole and exclusive jurisdiction and venue over any legal or equitable action to enforce or otherwise arising under this Guaranty shall be in either the Superior Court of King County for the State of Washington or in the U.S. District Court, Western District of Washington, Seattle Division, and no other court or tribunal shall have jurisdiction over the subject matter or personal jurisdiction over Guarantor or the Agencies to adjudicate said legal action between Guarantor and the Agencies. Guarantor and the Agencies each hereby irrevocably submits to the personal jurisdiction of the state and federal courts located in Seattle, Washington. Guarantor hereby designates the following as its agent for service of process in Washington State and agrees that any change in said agent or its contact information shall be subject to the approval of the Agencies as evidenced by a signed, written amendment to this section of this Guaranty:

Name: General Counsel
Address: 121-127 High Street
Prahran, Victoria, AUSTRALIA, 3181

Guarantor and the Agencies each agrees that it shall not object to service of process by any method authorized by the Washington Court Rules, or the U.S. Federal Rules of Civil Procedure, including, without limitation, service by mail, or any other means of service of process permitted by applicable law.

14. **Guarantor Information.** Not more frequently than once every 6 months, the Guarantor will supply to the Agencies an unaudited balance sheet and profit and loss statement, and annually an audited group consolidated account prepared in accordance with Australian accounting standards.

15. **Enforceability of Judgments.** In the event a court enters a final judgment or order in favor of one or more Agencies and against the Guarantor, and the Agency or Agencies seek to collect or otherwise enforce said judgment in Australia or any country other than the United States, the Guarantor agrees that it shall not assert any defenses that would defeat or limit the collection or enforceability of such judgment and, notwithstanding any provisions to the contrary herein, Guarantor hereby waives any such defenses.

16. **Severability.** If any provision hereof is void or so declared, such provision shall be deemed and hereby is severed from this Guaranty, which shall otherwise remain in full force and effect.

17. **Entire Agreement: Modification.** This instrument contains the entire agreement between the Agencies and Guarantor that concerns this Guaranty. It may be waived, modified, or amended only by an agreement in writing signed by the duly authorized representatives of each party.

18. **Notices.** Any notice or other writing given hereunder to Guarantor or the Agencies shall be sufficiently given if delivered personally, or by a reputable overnight delivery service, or by telecopier or similar facsimile transmission (which transmission shall be confirmed by the mailing of the copy of the transmitted document) or if sent by prepaid registered or certified mail to such party:

(a)	If to Guarantor:	Name	Simon Davey
		Title	General Counsel
		Address	121-127 High Street, Prahran
		Telephone:	+61 3 95262351
		Facsimile:	+61 3 95262303
		Email:	sdavey@erggroup.com

	with a copy to:	Name	
		Title:	Vice President
		Address:	Suite 900, 1800 Sutter Street Concord, CA 94520
		Telephone:	+1 925 686 8233
		Facsimile:	+1 925 686 8220
		Email:	min.wei@erggroup.com

(b) If to the Agencies: Name Contract Administrator
 Title Reg. Fare Coordination Project
 Address 201 S. Jackson St., KSC-TR-
 0333
 Telephone: (206) 684-1511
 Facsimile: (206) 684-2059
 Email:

with a copy to: Name General Manager
 Title King County Metro Transit
 Address 201 S. Jackson St., KSC-TR-
 0415
 Telephone: (206) 684-1619
 Facsimile: (206) 684-1778
 Email:

or to such other address as the party to whom such notice is to be given has last notified the party giving the same in the manner provided in this Section. Any notice delivered or telexed or telecopied or sent by similar facsimile transmission shall be deemed to have been given and received on the day it is delivered at such address, or, if any day is not a business day, then on the next business day. Any notice given by mail shall be deemed to have been given and received fourteen (14) business days after the date of its mailing.

19. Notice Required by Law. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING PAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON STATE LAW.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date and year first above written.

Vix ERG Pty Ltd

By: 

Name
Title

STEVEN GALLAGHER
EXECUTIVE DIRECTOR.

STATE OF VICTORIA

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I certify that I know or have satisfactory evidence that Simon Davey is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Exec. Director of Vix ERG Ltd to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 15 day of May, 2009.



NOTARY PUBLIC in and for the State of Victoria

Printed Name: Christopher S. Sander

Residing at: 121-127 High Street

My commission expires: 15/05/2011

ACCEPTANCE OF GUARANTY

STATE OF VICTORIA
NOTARY PUBLIC
CHRISTOPHER SANDER
121-127 HIGH STREET
PRAHRAN, VIC 3181

To: **Vix ERG PTY LTD**
Simon Davey
General Counsel
121-127 High Street
Prahran, VIC, Australia 3181

By instrument dated 12th ^{JUNE} May, 2009, Vix ERG Pty Ltd, as Guarantor executed a Guaranty on behalf of ERG Transit Systems (USA), a California corporation, to guarantee performance by ERG Transit Systems (USA) under Contract 229944 "Contract for the Development, Implementation, Operation and Maintenance of the Regional Fare Coordination System" with the Agencies.

Please take notice that the offer of guaranty by Vix ERG Pty Ltd is accepted and shall be deemed effective on the effective date of such Contract.

For and On Behalf of the Agencies

Candace Carlson

Name

Contract Administrator

Title